

Bureau of Indian Affairs, Interior

§ 84.002

(i.e., maintaining the same relationship with the tribe as those on the list submitted with the group's documented petition).

(c) While the newly acknowledged tribe shall be considered eligible for benefits and services available to federally recognized tribes because of their status as Indian tribes, acknowledgment of tribal existence shall not create immediate access to existing programs. The tribe may participate in existing programs after it meets the specific program requirements, if any, and upon appropriation of funds by Congress. Requests for appropriations shall follow a determination of the needs of the newly acknowledged tribe.

(d) Within six months after acknowledgment, the appropriate Area Office shall consult with the newly acknowledged tribe and develop, in cooperation with the tribe, a determination of needs and a recommended budget. These shall be forwarded to the Assistant Secretary. The recommended budget will then be considered along with other recommendations by the Assistant Secretary in the usual budget request process.

§ 83.13 Information collection.

(a) The collections of information contained in § 83.7 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076-0104. The information will be used to establish historical existence as a tribe, verify family relationships and the group's claim that its members are Indian and descend from a historical tribe or tribes which combined, that members are not substantially enrolled in other Indian tribes, and that they have not individually or as a group been terminated or otherwise forbidden the Federal relationship. Response is required to obtain a benefit in accordance with 25 U.S.C. 2.

(b) Public reporting burden for this information is estimated to average 1,968 hours per petition, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this collection of informa-

tion, including suggestions for reducing the burden, to both the Information Collection Clearance Officer, Bureau of Indian Affairs, Mail Stop 336-SIB, 1849 C Street, NW., Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 84—ENCUMBRANCES OF TRIBAL LAND—CONTRACT APPROVALS

Sec.

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AUTHORITY: 25 U.S.C. 81, Pub. L. 106-179.

SOURCE: 66 FR 38923, July 26, 2001, unless otherwise noted.

§ 84.001 What is the purpose of this part?

The purpose of this part is to implement the provisions of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

§ 84.002 What terms must I know?

The *Act* means the Indian Tribal Economic Development and Contract Encouragement Act of 2000, Public Law 106-179, which amends section 2103 of the Revised Statutes, found at 25 U.S.C. 81.

Encumber means to attach a claim, lien, charge, right of entry or liability

to real property (referred to generally as encumbrances). Encumbrances covered by this part may include leasehold mortgages, easements, and other contracts or agreements that by their terms could give to a third party exclusive or nearly exclusive proprietary control over tribal land.

Indian tribe, as defined by the Act, means any Indian tribe, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the Secretary to Indians because of their status as Indians.

Secretary means the Secretary of the Interior or his or her designated representative.

Tribal lands means those lands held by the United States in trust for an Indian tribe or those lands owned by an Indian tribe subject to federal restrictions against alienation, as referred to Public Law 106–179 as “Indian lands.”

§ 84.003 What types of contracts and agreements require Secretarial approval under this part?

Unless otherwise provided in this part, contracts and agreements entered into by an Indian tribe that encumber tribal lands for a period of seven or more years require Secretarial approval under this part.

§ 84.004 Are there types of contracts and agreements that do not require Secretarial approval under this part?

Yes, the following types of contracts or agreements do not require Secretarial approval under this part:

(a) Contracts or agreements otherwise reviewed and approved by the Secretary under this title or other federal law or regulation. See, for example, 25 CFR parts 152 (patents in fee, certificates or competency); 162 (non-mineral leases, leasehold mortgages); 163 (timber contracts); 166 (grazing permits); 169 (rights-of-way); 200 (coal leases); 211 (mineral leases); 216 (surface mining permits and leases); and 225 (mineral development agreements);

(b) Leases of tribal land that are exempt from approval by the Secretary under 25 U.S.C. 415 or 25 U.S.C. 477;

(c) Sublease and assignments of leases of tribal land that do not require approval by the Secretary under part 162 of this title;

(d) Contracts or agreements that convey to tribal members any rights for temporary use of tribal lands, assigned by Indian tribes in accordance with tribal laws or custom;

(e) Contracts or agreements that do not convey exclusive or nearly exclusive proprietary control over tribal lands for a period of seven years or more;

(f) Contracts or agreements that are exempt from Secretarial approval under the terms of a corporate charter authorized by 25 U.S.C. 477;

(g) Tribal attorney contracts, including those for the Five Civilized Tribes that are subject to our approval under 25 U.S.C. 82a;

(h) Contracts or agreements entered into in connection with a contract under the Indian Self-Determination Act, 25 U.S.C. 450f, or a compact under the Tribal Self-Governance Act, 25 U.S.C. 458aa.

(i) Contracts or agreements that are subject to approval by the National Indian Gaming Commission under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., and the Commission’s regulations; or

(j) Contracts or agreements relating to the use of tribal lands for hydro-power projects where the tribal lands meet the definition of a “reservation” under the Federal Power Act (FPA), provided that:

(1) Federal Energy Regulatory Commission (FERC) has issued a license or an exemption;

(2) FERC has made the finding under section 4(e) of the FPA (16 U.S.C. 797(e)) that the license or exemption will not interfere or be inconsistent with the purpose for which such reservation was created or acquired; and

(3) FERC license or exemption includes the Secretary’s conditions for protection and utilization of the reservation under section 4(e) and payment of annual use charges to the tribe under section 10(e) of the FPA (16 U.S.C. 803(e)).

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§ 84.005 Will the Secretary approve contracts or agreements even where such approval is not required under this part?

No, the Secretary will not approve contracts or agreements that do not encumber tribal lands for a period of seven or more years. Within thirty days after receipt of final, executed documents, the Secretary will return such contracts and agreements with a statement explaining why Secretarial approval is not required. The provisions of the Act will not apply to those contracts or agreements the Secretary determines are not covered by the Act.

§ 84.006 Under what circumstances will the Secretary disapprove a contract or agreement that requires Secretarial approval under this part?

(a) The Secretary will disapprove a contract or agreement that requires Secretarial approval under this part if the Secretary determines that such contract or agreement:

- (1) Violates federal law; or
- (2) Does not contain at least one of the following provisions that:
 - (i) Provides for remedies in the event the contract or agreement is breached;
 - (ii) References a tribal code, ordinance or ruling of a court of competent jurisdiction that discloses the right of the tribe to assert sovereign immunity as a defense in an action brought against the tribe; or
 - (iii) Includes an express waiver of the right of the tribe to assert sovereign immunity as a defense in any action brought against the tribe, including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action.

(b) The Secretary will consult with the Indian tribe as soon as practicable before disapproving a contract or agreement regarding the elements of the contract or agreement that may lead to disapproval.

§ 84.007 What is the status of a contract or agreement that requires Secretarial approval under this part but has not yet been approved?

A contract or agreement that requires Secretarial approval under this

part is not valid until the Secretary approves it.

§ 84.008 What is the effect of the Secretary's disapproval of a contract or agreement that requires Secretarial approval under this part?

If the Secretary disapproves a contract or agreement that requires Secretarial approval under this part, the contract or agreement is invalid as a matter of law.

PART 87—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

Sec.

- 87.1 Definitions.
- 87.2 Purpose.
- 87.3 Time limits.
- 87.4 Conduct of hearings of record.
- 87.5 Submittal of proposed plan by Secretary.
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- 87.7 Submittal of proposed legislation by Secretary.
- 87.8 Enrollment aspects of plans.
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- 87.10 Per capita payment aspects of plans and protection of funds accruing to minors, legal incompetents and deceased beneficiaries.
- 87.11 Investment of judgment funds.
- 87.12 Insuring the proper performance of approved plans.

AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

SOURCE: 39 FR 1835, Jan. 15, 1974, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 87.1 Definitions.

As used in this part 87, terms shall have the meanings set forth in this section.

(a) *Act* means the Act of October 19, 1973 (Pub. L. 93-134; 87 Stat. 466, 467, 468).

(b) *Secretary* means the Secretary of the Interior or his authorized representative.

(c) *Commissioner* means the Commissioner of Indian Affairs or his authorized representative.

(d) *Area Director* means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.